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**Harry Browning, an Individual d/b/a Browning for Brickwork, and Northwest Masonry, a Sole Proprietorship and Brick & Stone Masons Union No. 20 of Lake County, Illinois. Case 13-CA-33845**

August 15, 1996

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND FOX

Upon a charge and an amended charge filed by the Union on November 9, 1995, and March 25, 1996, respectively, the General Counsel of the National Labor Relations Board issued a complaint on April 9, 1996, against Harry Browning, an individual d/b/a Browning for Brickwork, and Northwest Masonry, a sole proprietorship, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.<sup>1</sup>

On July 16, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On July 18, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated May 17, 1996, notified the Respondent that unless an answer were received by June 3, 1996, a Motion for Summary Judgment would be filed.

<sup>1</sup> The Respondent's refusal or failure to claim certified mail should not serve to defeat the purposes of the Act. *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a sole proprietorship, with offices and places of business in Buffalo Grove, Illinois, and Palm Harbor, Florida, has been engaged in stone and brick masonry construction. During the past calendar year, Respondent performed services valued in excess of \$50,000 to other enterprises within the State of Illinois, including Scarsdale Homes, Inc., which enterprises meet the Board's jurisdictional standards other than indirect inflow and indirect outflow. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

About October 30, 1995, Respondent's foreman, Clay Carpenter, at Respondent's Buffalo Grove, Illinois worksite, directed employees not to sign anything which they received from a union adherent. About October 31, 1995, Respondent, by owner Harry Browning, at Respondent's Buffalo Grove, Illinois worksite, threatened employees by stating: (1) that they could not work for the Respondent if they supported or were members of the Union; and (2) that they would be considered as having "quit" their employment if they joined in a protected concerted work stoppage and/or engaged in lawful picketing.

About October 30, 1995, Respondent discharged its employee, Robert Rudis. About October 31, 1995, Respondent discharged its employees, Kevin MacDuff and Mike Dragisich. Respondent discharged these three employees because they either supported or joined the Union.

**CONCLUSIONS OF LAW**

By the conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce with the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

By discharging Robert Rudis, Kevin MacDuff, and Mike Dragisich, the Respondent has also been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting

commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging Robert Rudis, Kevin MacDuff, and Mike Dragisich, we shall order the Respondent to offer the discriminatees immediate and full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharges, and to notify the discriminatees in writing that this has been done.

#### ORDER

The National Labor Relations Board orders that the Respondent, Harry Browning, an individual, d/b/a Browning for Brickwork, and Northwest Masonry, a sole proprietorship, Buffalo Grove, Illinois, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Directing employees not to sign anything which they receive from a union adherent, or threatening employees by stating that they cannot work for the Respondent if they supported or were members of the Brick & Stone Masons Union No. 20 of Lake County, Illinois, or that they would be considered as having "quit" their employment if they joined in a protected concerted work stoppage and/or engaged in lawful picketing.

(b) Discharging employees because they supported or joined the Union, or any other labor organization.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) Within 14 days from the date of this Order, offer Robert Rudis, Kevin MacDuff, and Mike Dragisich full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Robert Rudis, Kevin MacDuff, and Mike Dragisich whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest, as set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and, within 3 days thereafter, notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Buffalo Grove, Illinois, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 9, 1995.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region

<sup>2</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 15, 1996

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William B. Gould IV, Chairman

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Margaret A. Browning, Member

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Sarah M. Fox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT direct employees not to sign anything they receive from a union adherent or threaten employees by stating that they cannot work for us if they supported or were members of the Brick & Stone Masons Union No. 20 of Lake County, Illinois, or that they

will be considered as having "quit" their employment if they joined in a protected concerted work stoppage and/or engaged in lawful picketing.

WE WILL NOT discharge employees because they support or join the Union, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Robert Rudis, Kevin MacDuff, and Mike Dragisich full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Robert Rudis, Kevin MacDuff, and Mike Dragisich whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Robert Rudis, Kevin MacDuff, and Mike Dragisich, and, within 3 days thereafter, notify them in writing that this has been done and that the discharges will not be used against them in any way.

HARRY BROWNING, AN INDIVIDUAL  
D/B/A BROWNING FOR BRICKWORK, AND  
NORTHWEST MASONRY, A SOLE PROPRIETORSHIP